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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 IN RE: PHENYLPROPANOLAMINE
10 (PPA) PRODUCTS LIABILITY
11 LITIGATION,

MDL NO. 1407

12 This document relates to:

13 Robert Shirley v. Kroger
14 Texas, L.P., et al., No. 3-cv-
15 622

ORDER GRANTING MOTION TO
EXTEND DISCOVERY DEADLINE
AND DENYING PLAINTIFF'S
PETITION FOR SUGGESTION OF
REMAND ORDER

16 Defendants Bayer Corporation ("Bayer") and Wyeth jointly
17 move this court for an order setting the fact discovery deadline
18 in the above-referenced matter to December 16, 2005, or in the
19 alternative, to extend the current discovery deadline to May 15,
20 2005. Plaintiff did not file an opposition to the motion.
21 However, on February 3, 2005 plaintiff filed a petition for a
22 suggestion of remand order. Having reviewed the motion and
23 petition, the court hereby finds and rules as follows:

24 Plaintiff was deposed on December 16, 2004. Bayer and Wyeth
25 claim that plaintiff provided testimony during his deposition
26 that was materially different from the information disclosed in

ORDER

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1 the Plaintiff Fact Sheet ("PFS"). Specifically, they claim that
2 plaintiff gave testimony that suggests that his stroke took place
3 in October 1995, instead of in April 2000 as he had alleged in
4 the PFS. Plaintiff also revealed for the first time that he has
5 a serious back injury, has used a breathing machine for a number
6 of years, and has debilitating pain as a result of heart surgery
7 he had a few years ago.

8 Given this new information, Bayer and Wyeth argue that
9 discovery in this case is not complete. The defendants need the
10 opportunity to follow-up on plaintiff's testimony and take any
11 necessary additional depositions.¹ As such, they request that the
12 court recalculate the discovery deadline to December 16, 2005,
13 one year from the date of plaintiff's deposition. Alternatively,
14 they request that the court extend the current deadline to May
15 15, 2005.

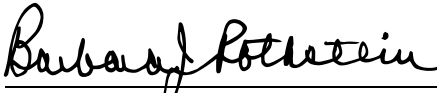
16 Plaintiff did not file an opposition to the motion. However,
17 on February 3, 2005 plaintiff filed a petition for suggestion of
18 remand order in which he asserted that discovery in this matter
19 is complete and the case is ripe for remand. The court
20 disagrees--discovery in this case is not complete. To the
21 contrary, plaintiff's actions have delayed and unnecessarily
22 complicated the discovery process. Plaintiff has an obligation
23 to provide complete responses on the PFS, and to supplement it

25 ¹In addition, defendants want to depose plaintiff's son.
26 Despite repeated requests, plaintiff's counsel has not produced
him for deposition.

1 when necessary. In the future, the court expects plaintiff to
2 cooperate fully in the discovery process. If the court is made
3 aware of any other dilatory actions by plaintiff, the court will
4 entertain a motion to dismiss the case.

5 Based on the foregoing, the court GRANTS the motion to
6 extend the discovery deadline and hereby extends it to September
7 1, 2005. The court DENIES plaintiff's Petition for a Suggestion
8 of Remand Order.

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10 DATED at Seattle, Washington this 28th day of April, 2005.

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13 BARBARA JACOBS ROTHSTEIN
14 UNITED STATES DISTRICT COURT
15 JUDGE
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